

Remarks

In response to the Final Office Action, the applicant has amended claims 3 and 34. Claims 3, 5, 7-23, 25-31, and 34 are presented for examination. The applicant respectfully requests reconsideration of the outstanding rejections in view of the following remarks.

Claim Amendments

Independent Claims 3 and 34 have been amended to recite a lens that provides an automatic or manual control of, as described in the specification.¹

Claim Rejections - 35 U.S.C. §103

Independent Claims 3 and 34 have been rejected under 35 U.S.C. §103 as being obvious over U.S. Pat. No. 6,293,911 to Imaizumi et al. ("Imaizumi").

Imaizumi teaches an endoscopic imaging system,² and provides numerous explicit³ and implicit⁴ references to endoscopic treatments. The applicant has disclosed a fundamentally different system for use in a fundamentally different imaging environment -- capturing images of an open surgical site. This requires different optics, different lighting hardware and electronics (with sufficient power to illuminate an operating area), different infrastructure (to close off ambient light), and so forth. In order to practice this system, the applicant has designed and fabricated (or had fabricated) custom components such as filters, lens systems, and related hardware. The applicant has also conceived (and sought patent protection for) other system components such as lighting modules⁵ and control software⁶ in the absence of suitable commercially-available alternatives. To be sure, the applicant's system shares certain abstract principles of operation with Imaizumi. Most particularly, both disclosures favor the use of biocompatible fluorescent dyes such as indocyanine green to obtain images of regions of interest. But these are different imaging systems.

¹ U.S. Pub. No. 2005/0182321, ¶ [0100].

² *See, e.g.*, Imaizumi, Title and Abstract.

³ *See, e.g.*, Imaizumi, col. 28, lines 47-50 ("Diagnosis can therefore be achieved properly, and an endoscopic treatment can be carried out properly.").

⁴ *See, e.g.*, Imaizumi col. 34, lines 45-50 (describing laser therapy for a lesion).

⁵ *See* commonly-owned Int'l App. No. PCT/US08/069663.

⁶ *See* commonly-owned Int'l App. No. PCT/US07/072803.

The examiner has rejected the claims on the basis that they do not recite any structural differences with Imaizumi. The applicant traverses this rejection because many elements are necessarily structurally different in order to support imaging of an open surgical site. Nonetheless, in order to expedite prosecution of these claims, the applicant has further amended the claims to recite an additional structure feature that would not typically be found in a conventional endoscope – a lens that provides automatic or manual control of focus.

Conventional endoscopes employ telescope optics rather than camera optics, and as such do not generally require or provide control over focus (except perhaps within an eyepiece or the like for personalization) in ordinary use. The applicant notes in this respect that despite the generous detailing of numerous endoscopic embodiments in Imaizumi, the term “focus” never appears. Rather, Imaizumi describes conventional endoscopic systems in which an objective lens 120 is used to directly couple an image (e.g., from a fiber bundle, or directly from the tip of the endoscope for an electronic endoscope) to a CCD or the like.⁷

Because Imaizumi does not teach or suggest the use of a lens that provides automatic or manual control of focus, Imaizumi cannot render the claimed invention obvious, either alone or in combination with the other prior art of record. The applicant respectfully requests reconsideration and withdrawal of the claim rejections based on Imaizumi. Because the independent claims are allowable, the claims depending therefrom are likewise in condition for allowance.

* * * * *

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. Nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

⁷ See, e.g., Imaizumi, col. 30, lines 4-5 (“A CCD 121 is placed as a solid-state imaging device at the image formation position.”)

Conclusion

The applicant believes that the Claims as amended are in condition for allowance. A notice to this affect is respectfully requested.

The Director is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17, or to credit any overpayments, to Deposit Account No. 50-4262 in order to have this paper considered.

Respectfully submitted,

STRATEGIC PATENTS, P.C.

/Robert Mazzaresc/

Robert A. Mazzaresc

Reg. No. 42,852

Telephone: (781) 453-9993

Customer Number 43520

July 30, 2009